

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

SHAWN SOBOTKA,

Plaintiff,

vs.

CATHY REDFERN, MEDICAL SERVICES  
MANAGER and DR. KOHUT, DOCTOR,

Defendants.

CV 16-00047-H-DLC-JTJ

FINDINGS AND  
RECOMMENDATIONS OF UNITED  
STATES MAGISTRATE JUDGE

On January 25, 2018, Plaintiff Shawn Sobotka filed a Motion for a 60-day extension of time. (Doc. 34.) Mr. Sobotka indicated he was being released from prison on January 26, 2018 and needed additional time to find a residence, employment, and an attorney. (Doc. 34.) The Court granted the motion and ordered that Mr. Sobotka's response to Defendants' Motion for Summary Judgment was due on or before March 30, 2018. (Doc. 35.)

Mr. Sobotka was reminded that he must immediately advise the Court and opposing counsel of any change of address and its effective date and that a failure to file a notice of change of address may result in the dismissal of the action for

failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). (Doc. 35.)

Despite this warning, Mr. Sobotka has not filed a notice of change of address and has not filed a response to Defendants' motion. The Department of Corrections website confirms that Mr. Sobotka's sentence expired on January 26, 2018.

(<https://app.mt.gov/conweb/Offender/2133811> accessed August 2, 2018.)

The Local Rules for the District of Montana provide:

- (b) Dismissal Due to Failure to Notify. The Court may dismiss a complaint without prejudice or strike an answer when:
  - (1) a document directed to the attorney or self-represented party by the court has been returned to the court as not deliverable; and
  - (2) the court fails to receive within 60 days of this return a written communication from the attorney or self-represented party indicating a current address for service.

L.R. 5.2(b). On May 23, 2018, the Court issued an Order requiring Mr. Sobotka to notify the Court of his current address for service within 60 days. (Doc. 36.) That Order was returned as undeliverable. (Doc. 37.) Within the following 60-day period, and as of the date of this recommendation, Mr. Sobotka has not provided the Court with a written notice informing it of his change of address.

Therefore, IT IS HEREBY RECOMMENDED that all pending motions should be terminated and this action DISMISSED without prejudice pursuant to L.R. 5.2(b).

**NOTICE OF RIGHT TO OBJECT TO FINDINGS &  
RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT**

The parties may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing) hereof.<sup>1</sup> 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 2nd day of August, 2018.

/s/ John Johnston

John Johnston  
United States Magistrate Judge

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<sup>1</sup>Rule 6(d) of the Federal Rules of Civil Procedure provides that “[w]hen a party may or must act within a specified time after being served and service is made under Rule 5(b)(2)(C) (mail) . . . 3 days are added after the period would otherwise expire under Rule 6(a).” Therefore, since Mr. Sobotka is being served by mail, he is entitled an additional three (3) days after the period would otherwise expire.